

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

DEANDRE L. SMITH,

Defendant.

CASE NO. 8:10CR51

TENTATIVE FINDINGS

The Court has received the Presentence Investigation Report (“PSR”) in this case. The parties have not objected to the PSR. See Order on Sentencing Schedule, ¶ 6. The government adopted the PSR. (Filing No. 25.) The Defendant moved for a downward departure or variance.¹ (Filing No. 26). The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 2005 WL 50108 (U.S. Jan. 12, 2005), the sentencing guidelines are advisory.

The Court concludes that the PSR is correct. However, the Court intends to vary downward to reflect a fair crack cocaine/powder ratio under Senate bill 1789. The Court will hear the Defendant's motion at sentencing.

IT IS ORDERED:

1. The parties are notified that my tentative findings are that the PSR is correct in all respects;
2. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the

¹Although the motion is also captioned as objections to the PSR, no objections are raised.

submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

3. Absent submission of the information required by paragraph 2 of this Order, my tentative findings may become final;

4. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing; and

5. The Defendant's motion for a downward departure and variance (Filing No. 26) will be heard at sentencing.

DATED this 20th day of June, 2010.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge